

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TRC TIRE SALES, LLC,
Plaintiff,

v.

EXTREME TIRE & SERVICE, INC.,
Defendant.

No. CV-08-015-FVS

TENTATIVE CONCLUSIONS

THIS MATTER comes before the Court based upon the defendant's motion to dismiss for lack of personal jurisdiction. The defendant is represented by Ross White and Geana M. Van Dessel. The plaintiff is represented by Robert A. Dunn and Michael R. Tucker.

BACKGROUND

TRC Tire Sales, LLC, ("TRC Tire") is organized under the law of the law of the State of Washington. Its principal place of business is Spokane, Washington. Extreme Tire & Service, Inc., ("Extreme Tire") is organized under the law of the State of Louisiana. Its principal place of business is Mandeville, Louisiana. TRC Tire purchased two used, commercial tires from Extreme Tire for the sum of one-hundred thirty thousand dollars. Afterward, TRC Tire allegedly learned the tires have defects which render them commercially worthless. TRC Tire filed an action against Extreme Tire in Spokane County (Washington) Superior Court. TRC Tire is seeking relief under both contract and tort law. Extreme Tire removed the action to United

1 States District Court for the Eastern District of Washington, 28
2 U.S.C. § 1446, based upon diversity of citizenship, 28 U.S.C. §§
3 1441(b), 1332(a)(1). Now, Extreme Tire moves to dismiss the action
4 under Federal Rule of Civil Procedure 12(b)(2) on the ground that it
5 is not subject to personal jurisdiction in this forum.¹

6 The story begins late in 2006. At the time, the tires at issue
7 in this case were owned by a third party and located in Phoenix,
8 Arizona. The third party wanted to sell the tires. The owner of
9 Extreme Tire, Ronnie Rachal, hoped to broker a sale. To that end, he
10 listed the tires upon his company's website and sent a mass email to
11 tire dealers around the United States, including at least one, and
12 perhaps as many as six, in Washington.²

13 Thomas Servine, one of TRC Tire's co-owners, learned about the
14 tires from another Washington tire dealer. He telephoned Mr. Rachal
15 on July 24, 2007. Mr. Servine alleges that Mr. Rachal told him the
16 tires were "clean"; that is to say, they did not have any repairs and
17 did not need any. Mr. Servine decided to purchase the tires. The
18 terms of the purchase were finalized via telephone and email.

19 As explained above, the tires were owned by a third party and
20 located in Phoenix. Extreme Tire bought the tires from the third
21 party and sold them to TRC Tire. Rick Pettit, TRC Tire's other co-

22 ¹TRC Tire submitted a "Sur Reply" in violation of Local Rule
23 7.1 without seeking a waiver of the rule's limitations.

24 ²TRC Tire alleges that the Extreme Tire's email indicated
25 the tires were "clean," which is a term of art within the
26 industry. (Plaintiff's Response (Ct. Rec. 10), ¶ 10, at 5
(citing TRC 00014)). The email that TRC Tire cites in support of
this proposition appears to be dated August 28, 2007, i.e., after
TRC Tire purchased the tires from Extreme Tire.

1 owner, flew to Phoenix on or about July 25th and arranged for the
2 tires to be trucked to the company's storage facility, which is
3 located in the State of Idaho. There was some confusion with respect
4 to the purchase price. Mr. Servine called Mr. Rachal and discussed
5 the matter. Ultimately, he agreed to pay \$130,000 for the tires. TRC
6 Tire wired payment to Extreme Tire.

7 TRC Tire planned to sell the tires to a dealer in the State of
8 North Dakota. The North Dakota dealer asked TRC Tire to ship the
9 tires to an expert in the State of Montana for inspection. The expert
10 determined that the tires needed repair. As a result, the North
11 Dakota dealer refused to accept the tires. TRC Tire arranged for
12 another expert in Montana to examine the tires. He discovered damage
13 that the first expert missed. In the opinion of the second expert,
14 the tires have no commercial value.

15 After receiving the second expert's report, Mr. Servine attempted
16 to communicate with Mr. Rachal by telephone and by email. Mr. Servine
17 alleges he sent numerous messages indicating that TRC Tire refuses to
18 accept the tires on the ground they are nonconforming goods.
19 According to Mr. Servine, Mr. Rachal has not responded to any of the
20 messages. Consequently, TRC Tire filed the instant action.

21 **SPECIFIC JURISDICTION**

22 A nonresident company submits itself to the jurisdiction of
23 Washington courts with respect to any cause of action that arises out
24 of business which it transacts in this state. RCW 4.28.185(1)(a).
25 The jurisdiction conferred by RCW 4.28.185(1)(a) -- i.e., specific
26 jurisdiction -- extends to the limit imposed by the due process
clause. *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 269
(9th Cir.1995). Exercising specific jurisdiction over a nonresident

1 company is consistent with due process if the company directed acts at
 2 this forum, the plaintiff's claims arise out of the company's forum-
 3 related acts, and requiring the nonresident company to defend itself
 4 in this forum would be reasonable. *See Yahoo! Inc. v. La Ligue Contre*
 5 *Le Racisme et L'Antisemitisme*, 433 F.3d 1199, 1205-06 (9th Cir.2006)
 6 (*en banc*).

7 A. Purposeful Direction

8 The first prong of the Ninth Circuit's three-prong, specific
 9 jurisdiction-jurisdiction test is purposeful direction. TRC Tire may
 10 satisfy this prong by establishing that Extreme Tire "committed an
 11 intentional act, expressly aimed at the forum state, causing harm that
 12 the defendant knows is likely to be suffered in the forum state." 433
 13 F.3d at 1206 (internal punctuation and citations omitted).

14 *1. Intentional act*

15 TRC Tire must show that Extreme Tire's jurisdictionally-relevant
 16 acts were intentional. *Id.* at 1209. Mr. Rachal does not dispute that
 17 he sent an email to dealers in the State of Washington advertising the
 18 tires, and that he spoke by telephone with both Mr. Servine and Mr.
 19 Pettit. These are intentional acts.

20 *2. Express aiming*

21 An act is expressly aimed at the forum if it has or will have a
 22 significant impact upon the plaintiff in that state. *Id.* An
 23 expressly-aimed act need not be wrongful, although some are. *Id.* at
 24 1207-08. The following are examples of expressly-aimed acts:

25 In *Brainerd v. Governors of the Univ. of Alberta*, 873 F.2d 1257,
 26 1258 (9th Cir.1989), an administrator at the University of Arizona
 allegedly called an administrator at the University of Alberta and
 inquired about a professor who was then employed by the University of

1 Arizona but who formerly had been employed by the University of
2 Alberta. The Canadian administrator allegedly made disparaging
3 remarks about the Arizona professor. *Id.* The Arizona professor filed
4 an action in the State of Arizona alleging that the comments violated
5 an agreement he had with the University of Alberta and, in addition,
6 tortiously undermined his employment with the University of Arizona.
7 *Id.* The Ninth Circuit held that the Canadian administrator was
8 subject to specific jurisdiction in Arizona. *Id.* at 1259-60. Since
9 deciding *Brainerd*, the Ninth Circuit has cited the Canadian
10 administrator's comments as an instance of express aiming. *See, e.g.,*
11 *Bancroft & Master, Inc. v. August Nat'l Inc.*, 223 F.3d 1082, 1087-88
12 (9th Cir.2000). Even though he did not initiate the calls, the
13 statements that he allegedly made "during the conversations were not
14 'untargeted negligence' but rather were 'performed for the very
15 purpose of having their consequences felt in the forum state.'" *Id.*
16 (quoting *Brainerd*, 873 F.2d at 1260).

17 In *Bancroft & Master, Inc. v. August Nat'l Inc.*, a Georgia
18 organization sent a letter to the Virginia headquarters of an
19 organization that served as the registrar of domain names. 223 F.3d
20 at 1084-85. The Georgia organization complained to the registrar that
21 a California corporation was using its domain name without
22 authorization. *Id.* at 1085. The California corporation filed an
23 action in California. *Id.* The Ninth Circuit held that the Georgia
24 organization's complaint was expressly aimed at the forum state.
25 Despite the fact that the Georgia organization mailed its letter to
26 Virginia, not California, the Georgia organization allegedly knew its
letter would trigger the registrar's dispute-resolution procedures,
forcing the California corporation to defend its right to use a domain

1 name. *Id.* at 1087-88.

2 In *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1318-19 (9th
3 Cir.1998), an Illinois resident sent a letter to the corporate office
4 of a California corporation demanding payment for a domain name that
5 he had hijacked. The corporation filed an action in California. *Id.*
6 at 1319. The Ninth Circuit held that the Illinois resident was
7 subject to specific jurisdiction in California. *Id.* at 1322-23.
8 Since deciding *Panavision*, the Ninth Circuit has cited the Illinois
9 resident's demand letter as an instance of express aiming. *Rio*
10 *Properties, Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1020 (9th
11 Cir.2000).

12 In *Rio Properties, Inc. v. Rio Int'l Interlink*, a Costa Rican
13 company ran radio and print advertisements in the State of Nevada
14 offering gamblers an opportunity to wager on sporting events. 284
15 F.3d at 1012-13. A Nevada corporation filed suit in Nevada alleging
16 that the Costa Rican company was doing business under a name that
17 infringed its trademark. *Id.* The Ninth Circuit held that the Costa
18 Rican company's advertisements were expressly aimed at the forum state
19 because the ads allegedly were part of a marketing campaign which was
20 designed to obtain customers in Nevada. See *id.* at 1020.

21 In *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1107 (9th
22 Cir.2002), a California corporation filed an action in the State of
23 California against two former employees who were citizens of the
24 United Kingdom and Germany, respectively, and who lived and worked in
25 Europe. The corporation alleged that the defendants had made false
26 statements to the corporation's managers in California. *Id.* at 1109-
10. The Ninth Circuit held that the defendants expressly aimed their
communications at California based upon evidence they knew that the

1 corporation's "principal place of business was in California, knew
2 that the decisionmakers for [the corporation] were located in
3 California, and communicated directly with those California
4 decisionmakers." *Id.* at 1112. At the same time, the Ninth Circuit
5 recognized that not every foreign act with foreseeable effects in the
6 forum state gives rise to specific jurisdiction. *Id.* (internal
7 punctuation and citation omitted). The foreign act must have a
8 significant impact. In *Dole*, that requirement was satisfied by
9 evidence indicating that the defendants' communications were part of a
10 scheme to induce the corporation's managers "to implement a new
11 importing system, and, as a consequence, to enter into *significant and*
detrimental contractual arrangements." *Id.* (emphasis added).

12 In *Yahoo! Inc.*, two French organizations obtained orders from a
13 French court requiring a California internet service provider to
14 prevent its customers in France from obtaining access to certain Nazi-
15 related artifacts, texts, and websites. 433 F.3d at 1202-04. The
16 internet service provider filed an action in California challenging
17 the enforceability of the orders in the United States. *Id.* at 1204.
18 The Ninth Circuit held that the orders were expressly aimed at
19 California because, in order to comply, the internet service provider
20 had to modify its servers, which were located in the forum state. *Id.*
21 at 1209.

22 With the preceding cases in mind, it is appropriate to turn to
23 the facts of this one. Extreme Tire regularly sends email
24 advertisements to a limited number of Washington tire dealers. The
25 purpose of the advertisements is to solicit business. *Cf. Rio*
26 *Properties, Inc.*, 284 F.3d at 1020 (defendant conducted advertising
campaign in forum state). Although TRC Tire did not receive an email

1 advertisement concerning the tires, Mr. Servine learned about them
2 from some other source. He initiated contact with Mr. Rachal. His
3 call is precisely the sort of inquiry that Mr. Rachal hoped his
4 advertisements would generate. Ultimately, Mr. Rachal discussed the
5 tires with both Mr. Servine and Mr. Pettit.³ He knew they were TRC
6 Tire's decisionmakers, and that their company's office is located in
7 Washington. He hoped to persuade them to purchase the tires. Cf.
8 *Panavision Int'l, L.P.*, 141 F.3d at 1322 (defendant sent a letter to
9 the forum state seeking payment for the use of a domain name). Unlike
10 the defendant in *Panavision Int'l, L.P.*, he succeeded; and when he
11 did, he arranged for TRC Tire to wire payment to Louisiana. In
12 certain respects, his conduct is similar to that described in *Dole*.
13 303 F.3d at 1112 (defendants allegedly misrepresented facts in order
14 to manipulate the company's decision-making process). Without
15 question, Mr. Rachal's alleged misrepresentations are far less
16 elaborate than the ones alleged in *Dole*. Nevertheless, if TRC Tire's
17 allegations are true, the company has sustained a serious financial
18 loss as a result of Mr. Rachal's conduct; a loss which the company
19 experienced in the forum state. *Dole*, 303 F.3d at 1113-14 (a
20 corporation frequently suffers financial loss at its principal place
21 of business). Given the significant impact that Mr. Rachal's
22 jurisdictionally-relevant communications allegedly have had upon TRC
23 Tire in the forum state, his communications constitute expressly aimed
24 acts. *Yahoo! Inc.*, 433 F.3d at 1209 (an act is expressly aimed at the

25 ³The fact that Mr. Pettit was in Phoenix when he spoke to
26 Mr. Rachal does not preclude consideration of the call. Cf.
Bancroft & Master, Inc., 223 F.3d at 1087-88 (letter mailed from
Georgia to Virginia was expressly aimed at California).

1 forum if it has or will have a significant impact upon the plaintiff
2 in that state).

3 3. *Causing harm*

4 TRC Tire has satisfied two of the three requirements necessary to
5 establish purposeful direction. In order to satisfy the third
6 requirement, TRC Tire must demonstrate that Extreme Tire caused harm
7 that it knew was likely to be suffered in the forum state. 433 F.3d
8 at 1206. It is true that TRC Tire did not intend to use or sell the
9 tires in Washington. To the contrary, the company had tentatively
10 arranged to sell them to a North Dakota tire dealer. The fact that
11 some of the harm allegedly occurred in another state is relevant but
12 not dispositive. *Id.* at 1207. It is enough that TRC Tire allegedly
13 sustained a serious financial loss in Washington. Furthermore, Mr.
14 Rachal arguably should have foreseen that the loss would be sustained
15 here. As noted above, he knew that Messrs. Servine and Profit were
16 purchasing the tires on behalf of TRC Tire and that the company's
office is located in Spokane.

17 In sum, TRC Tire has shown that Extreme Tire purposefully
18 directed acts at this forum. By itself, however, TRC Tire's showing
19 is not enough to establish the existence of specific jurisdiction.
20 TRC Tire also must demonstrate that its claims arise out of Extreme
21 Tire's forum-related acts. *Id.* at 1206.

22 B. Arising Out Of

23 The Ninth Circuit has adopted a "but for" test for determining
24 whether a plaintiff's claims arise out of the defendant's forum-
25 related acts. *Menken v. Emm*, 503 F.3d 1050, 1058 (9th Cir.2007). TRC
26 Tire must show that it would not have suffered an injury "but for"
Extreme Tire's forum-related acts. *Id.* TRC Tire alleges that Mr.

1 Rachal misrepresented the quality of the tires, and that his alleged
2 misrepresentations breached duties he owed under contract and tort
3 law. Thus, his alleged forum-related communications are an essential
4 part of TRC Tire's claims. That being the case, its claims arise out
5 of his forum-related communications. See *Dole*, 303 F.3d at 1114
6 (plaintiff's claims arose out of defendant's forum-related contacts
7 where their contacts were an essential part of the plaintiff's
8 claims). As Extreme Tire points out, Mr. Rachal only had a few
9 conversations with Mr. Servine concerning the tires. While Extreme
10 Tire is correct, even a "'single forum state contact can support
11 jurisdiction if the cause of action arises out of that particular
12 purposeful contact of the defendant with the forum state.'" *Menken*,
13 503 F.3d at 1060 (quoting *Yahoo! Inc.*, 433 F.3d at 1210).
14 Consequently, the burden now shifts to Extreme tire to show that
15 exercising jurisdiction would be unreasonable. *Id.*

16 C. Reasonableness

17 Extreme Tire must present a compelling case that exercising
18 jurisdiction would be unreasonable. 503 F.3d at 1061. The Court must
19 consider seven, non-exhaustive factors in determining whether Extreme
20 Tire has carried its burden. *Id.* at 1060. The first factor is "the
21 extent of the defendants' purposeful interjection into the forum
22 state's affairs." *Id.* Extreme Tire actively has solicited, and
23 continues to solicit, business in the forum state. This factor weighs
24 in favor of exercising jurisdiction in this forum. The second factor
25 is "the burden on the defendant of defending in the forum." *Id.*
26 Extreme Tire is a small company. It will be heavily burdened by
having to defend itself in this forum. This factor weighs against
exercising jurisdiction. The third factor is "the extent of conflict

1 with the sovereignty of the defendants' state." *Id.* Exercising
2 jurisdiction over Extreme Tire will not infringe Louisiana's
3 sovereignty. This factor weighs in favor of exercising jurisdiction.
4 The fourth factor is "the forum state's interest in adjudicating the
5 dispute." *Id.* Washington has a strong interest in protecting its
6 residents from misrepresentations in business transactions. This
7 factor weighs in favor of exercising jurisdiction. The fifth factor
8 is "the most efficient judicial resolution of the controversy." *Id.*
9 Evidence could be located in a number of states, including Louisiana,
10 Washington, Idaho, Montana, and perhaps Arizona. As between Louisiana
11 and Washington, the latter is probably somewhat more convenient. This
12 factor tends to weigh in favor of exercising jurisdiction. The sixth
13 factor is "the importance of the forum to the plaintiff's interest in
14 convenient and effective relief." *Id.* There is no indication that
15 TRC Tire would be unable to obtain adequate relief from Extreme Tire
16 in Louisiana. This factor weighs against exercising jurisdiction.
17 The seventh and final factor is "the existence of an alternative
18 forum." *Id.* There is every indication that Louisiana is available as
19 an alternative forum for resolution of the parties' dispute. This
20 factor weighs against exercising jurisdiction. On balance, the
21 preceding seven factors tend to weigh in favor of exercising
22 jurisdiction over Extreme Tire in Washington. Extreme Tire has not
23 presented a compelling case against exercising jurisdiction.

24 **TENTATIVE CONCLUSIONS**

25 As far as the Due Process Clause is concerned, the critical issue
26 is whether Extreme Tire's contacts with Washington are such that the
company should "'reasonably anticipate being haled into court" in this
forum.'" *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 119,

1 107 S.Ct. 1026, 1036, 94 L.Ed.2d 92 (1987) (quoting *World-Wide*
2 *Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62
3 L.Ed.2d 490 (1980)). A company whose owner actively seeks to sell
4 tires in Washington, and who, in the process of selling two tires,
5 materially misrepresents their quality, should reasonably anticipate
6 being forced to defend itself in this forum. Thus, the Court is
7 inclined to deny Extreme Tire's motion to dismiss. Having said that,
8 the Court does not think the motion is frivolous.⁴

9 **CONCLUSIONS ARE TENTATIVE**

10 The conclusions set forth above are tentative. After listening
11 to oral argument, the Court may modify or abandon some or all of them.
12 Since this is not an order, the Court will not consider a motion for
13 reconsideration. Nor will the Court consider supplemental evidence or
14 memoranda. The record is complete for purposes of the defendant's
15 Rule 12(b)(2) motion.

16 **THE DISTRICT COURT EXECUTIVE** is hereby directed to enter the
17 Court's tentative conclusions and furnish copies to counsel.

18 **DATED** this 11th day of July, 2008.

19 s/ Fred Van Sickle
20 Fred Van Sickle
21 Senior United States District Judge
22
23
24

25 ⁴In view of the Court's tentative conclusion regarding
26 specific jurisdiction, it is unnecessary to determine whether
general jurisdiction exists.